

CERTIFIED TRUE COPY

5A
FILED

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

April 25, 1995
NEW JERSEY STATE BOARD
OF ACCOUNTANCY

By: Marianne W. Greenwald
Deputy Attorney General
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Tel. (201) 648-4738

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ACCOUNTANCY

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

KENNETH MACK cc 7/680

CONSENT ORDER

TO PRACTICE ACCOUNTANCY IN THE :
STATE OF NEW JERSEY :

This matter was opened to the New Jersey Board of Accountancy by receipt of information that Respondent had entered a plea of guilty on November 15, 1993 to a one count superseding information charging him with conspiring to use the mails in furtherance of a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises contrary to Title 18, United States Code, Section 1341. On August 23, 1994 respondent was sentenced to a five year period of probation, ordered to make restitution of \$30,000 and fined \$2,000.

Prior to sentencing, respondent appeared with counsel before a committee of the full Board and testified under oath as to the factual basis for respondent's plea of guilty.

5A

The incident arose out of Mr. Mack's association with a company called Fax Corporation. Allegedly Fax Corporation's initial intent was to develop, distribute and market a self-funding and self-supporting fax machine that could be then installed in various locations, such as retail stores, stationery stores, shops, et cetera. Ultimately the quantity of machines manufactured and delivered by the corporation was far less than the quantity pledged to potential clients of investors of the company.

Kenneth Mack had been hired as a consultant by the corporation in an effort on the part of the principal to take the company public. Kenneth Mack's former accounting firm collected \$32,000 in fees from the corporation for approximately 200 hours billed for the consulting services of Mack. Sometime after being hired, Mack loaned both the company and its principal approximately \$50,000 which has never been repaid.

The principal of the company allegedly removed \$750,000 for his own personal benefit and transferred additional funds of Fax Corporation to other business entities in which the principal had an interest. Mack did not perform accounting services for the company and was allegedly unaware of the corporation's expenditures. In addition, the principal sold exclusive distributorships to unsuspecting investors who never received fax machines, never received refunds, and in some cases never in fact had received rights to an exclusive geographic area as promised.

While retained by Fax, Kenneth Mack learned that insufficient funds were being set aside to make refunds and he became aware that machines were not being delivered. He knew that in September of 1989,

Fax Corporation did not have access to the number of machines being promised and he knew in November of 1989 that many investors who demanded refunds were not being given their refunds. Nevertheless, Mack remained as the named president of the company through December 1989 in spite of his knowledge that the principal continued to make misrepresentations to some of the investors.

The Board has reviewed the testimony of respondent as well as the District Court sentencing and plea proceeding transcripts. While a conviction of this nature without more would normally call for the most rigorous disciplinary action, the Board has taken into consideration the following mitigating factors. Respondent was involved with the company for a period of less than a year. He has testified that he resigned his position with the company, terminated his services, and disassociated himself from the corporation once he became aware of the fraudulent nature of the manner in which the principal of the corporation conducted business. Moreover, respondent has cooperated with Federal authorities and provided substantial assistance in the prosecution of the case. In consideration of all the above and in light of the fact that respondent had not solicited or caused the clients of his accounting practice to become investors or participants in the activity of the corporation, the Board has determined to mitigate disciplinary action to be taken in this matter.

Respondent acknowledging that the above described conduct constitutes a conviction of a crime involving moral turpitude and/or of a crime relating adversely to the accounting profession and constitutes professional misconduct in the use of fraud, dishonesty, deception and misrepresentation contrary to N.J.S.A. 45:1-21(b), and

5A

the parties having agreed and consented to the resolution of this matter without the necessity of formal administrative proceedings available to the Board, and respondent understanding the terms and impact of the within Order, and it therefore appearing that due cause exists for the entry of the within Order,

IT IS ON THIS 25th DAY OF April, 1995,
ORDERED:

1. That the license of Kenneth Mack to practice accountancy in the State of New Jersey is hereby suspended for five (5) years. All of said suspension shall be stayed, and respondent shall remain on probation for the duration of the suspension.
2. That respondent shall pay a civil penalty of \$1,500 and costs of \$500.00 to the Board contemporaneously with the entry of this Order.
3. That respondent shall cause the Board to receive annual reports from the Department of Probation as to his compliance with the conditions set forth by the Court.

STATE BOARD OF ACCOUNTANCY

By: Joel J. Rogoff
Joel J. Rogoff, C.P.A., President

I have read the within Order and understand its terms. I consent to its entry and agree to be bound by its terms

Kenneth Mack
Kenneth Mack